IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5207 of 2007()

CRIME NO. 184/07 OF POOCHAKKAL POLICE STATION

PETITIONER/A5

ABDUL SALAM, AGED 43,
S/O MOHD.MOULAVI, PADAVUNGALPARAMBU,
THRICHATTUKALAM P.O., PANAVALLY,
PANAVALLY VILLAGE, CHERTHALA TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.MANJU ANTONEY

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY
S.I. OF POLICE, POOCHAKKAL POLICE STATION
IN ALAPPUZHA DISTRICT, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 5207 of 2007

- -

Dated this the 17th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 5th accused in a crime registered, inter alia, under Section 399 I.P.C. There is an allegation under Section 27 of the Arms Act also. The prosecution alleges that the petitioner was one of a group of persons, who were allegedly prepared to commit the offence of dacoity. They are allegedly moving around in a vehicle. When they were intercepted, only A1 to A4 could be arrested. The petitioner and another took to their heels and could not be apprehended. The petitioner's name and details are given in the F.I.R. itself. That incident took place on 11.7.2007. The police have not been able to arrest the petitioner thereafter. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner was not present in the vehicle as alleged. He had no intention whatsoever to commit any offence much less the offence of dacoity. The petitioner has been

unnecessarily dragged into this case. The petitioner has not been absconding. He was admitted in a hospital and was undergoing treatment as an inpatient when this petition is filed. The petitioner is willing to co-operate with the investigators. The petitioner has no criminal antecedents, though some of the co-accused do allegedly have criminal antecedents. The petitioner is a heart patient and he apprehends that physical harm may be caused to him if he surrenders before the police. In these circumstances it is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Prosecutor opposes the application. An interim direction was issued that the petitioner shall not be arrested till he is discharged from the hospital. There was a further direction that if the petitioner were discharged in the meantime, he shall appear before the Investigating Officer. It is now conceded that the petitioner has been discharged from the hospital. He has not appeared before the Investigating Officer.

4. Having considered all the relevant inputs, I am satisfied that it is not necessary at all to permit the petitioner to arm himself with an order of anticipatory bail. However, I am satisfied, considering the peculiar facts

and circumstances of this case, including the fact that admittedly there is no allegation of criminal antecedents against the petitioner and his submission that he is ill and apprehends physical harm if he were to go to police custody except through the Magistrate, I am satisfied that appropriate direction can be issued under Section 438 Cr.P.C.

5. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 22.9.2007 at 11 a.m.

(b) The petitioner shall be at liberty to apply for bail. The Investigating Officer shall be entitled to apply for custody. The learned Magistrate shall pass appropriate orders on such applications expeditiously.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 24.9.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 24.9.2007 as directed in clause (1) above, he shall be released on bail on his executing

a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 24.9.2007.

(R. BASANT)
Judge

tm